

Internal Revenue Service
Director, Exempt Organizations

Department of the
P.O. Box 2508 - E
Cincinnati, OH 4

Date: MAY 24 2001

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:

[REDACTED] Phone

[REDACTED] FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

~~_____~~
If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

Steven P. Miller

Director, Exempt Organizations

Enclosures: 3

[REDACTED]

The information submitted indicates that your organization was incorporated on [REDACTED]. Your Articles of Incorporation were amended [REDACTED] to meet the organizational test of IRC 501(c)(3).

Your activities, as stated in your application, are to "provide a part-time educational lunch activity program for children registered at [REDACTED]." You indicate that your only source of financial support "will be obtained from tuition for the preschool children attending the lunch program." You also indicated that "Only preschool children enrolled at [REDACTED] are entitled to participate in the educational program provided by [REDACTED]." [REDACTED] is a for-profit corporation.

In your response to our letter dated [REDACTED] you stated that "[REDACTED] operates a program where children bring their lunch to the facility, share playtime, and socialize. [REDACTED] sessions are two hours." You also stated that "The clients of [REDACTED] are also clients of [REDACTED]."

In your letter dated [REDACTED] you indicated that the owners of [REDACTED] are the Board members of [REDACTED].

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, ** fund or foundation, organized and operated exclusively for religious, charitable, scientific, **literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as

follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section."

"(c)(1) Primary activities. An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

"(d)(2) Charitable defined. The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency."

"(d)(3)(I) In General. The term "educational", as used in section 501(c)(3), relates to-

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful

[REDACTED]

to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provide that all the organizations there described must serve a public purpose rather than a private interest, as follow.

"An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

One of the most important issues involved in determining the exempt status of an organization under Internal Revenue Code section 501(c)(3) is whether the operation of the organization serves the private interests of those in control.

A factor which indicates the use and control of a particular organization is for the benefit of the public is that control of the organization rests in a board of trustees composed of civic leaders of the community being served who have no direct economic interest in the organization.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945) the Court held that a better business bureau was not exclusively educational or charitable. Its activities were in part aimed at promoting the prosperity and standing of the business community, even though there was also benefit to the public. The Court stated that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. The presence of a single nonexempt purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly exempt purposes. According to Revenue Ruling 74-553, 1974-2 C.B. 168, this rationale applies equally well to any category of charitable purposes under section 501(c)(3) of the Code.

Revenue Ruling 69-175, 1969-1 C.B. 149 held that a nonprofit organization, formed by parents of pupils attending a private school, that provides school bus transportation for its members' children serves a private rather than a public interest and does not qualify for exemption under section 501(c)(3). The ruling stated that "By

[REDACTED]

providing bus transportation for school children, the organization enables the parents to fulfill their individual responsibility of transporting their children to school. Thus the organization serves a private rather than public interest. Accordingly, it is not exempt from Federal income tax under section 501(c)(3)."

The only activity of your organization is providing a place for the students of the for-profit preschool to eat their lunch. In response to my request for you to describe your educational program you stated that it is "...a program where children bring their lunch to the facility, share playtime, and socialize." Eating lunch, and playing is not an educational program.

Your lunch "program" is an integral part of the for-profit preschool. The Board of Directors of the organization consists only of the owners of the for-profit preschool. It is operating in the same facility as the for-profit preschool. Therefore, the [REDACTED] will be providing private benefit to the for-profit preschool and thus will not qualify for tax-exempt status.

Accordingly, you are not entitled to exemption from Federal income tax under section 501(c)(3) of the Code and are required to file income tax returns on Form 1120. Contributions to you are not deductible by donors under section 170 of the Code.

Form **6018**
(Rev. August 1983)

Department of the Treasury-Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Prepare in
Duplicate

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

MAY 24 2001

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501 (c) (3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- ☒ Denial of exemption 501 (c) (3)
- ☐ Revocation of exemption, effective
- ☐ Modification of exempt status from section 501 (c)() to 501 (c) (), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective
- ☐ Classification as an organization described in section 509(a)(), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Signature and Title

Date

Cat. No. 430000

Form 6018 (Rev. 8-1983)